

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

THE AMERICAN INSURANCE COMPANY

PLAINTIFF

V.

CIVIL ACTION NO. 3:07CV746HTW-LRA

C.E. FRAZIER CONSTRUCTION
COMPANY, ET AL.

DEFENDANTS

**REPLY MEMORANDUM OF PHYLLIS
FRAZIER IN PARTIAL OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT**

The American Insurance Company (“American”) has moved for summary judgment on its claim for indemnity pursuant to a General Indemnity Agreement executed by Phyllis Frazier and the other Defendants. Phyllis Frazier has no personal knowledge of the alleged defaults by Pryor & Frazier Construction Company and, therefore, has no good faith basis to oppose American’s motion on the issue of liability.

However, American apparently seeks an award of damages that would include \$64,645.00 “demanded” by the Mississippi State Tax Commission under tax rider bonds issued by American. There is no evidence in the record that American paid any money to the Tax Commission. Since American has the burden of proving its recoverable damages, any judgment for American must be limited to the \$35,619.45 paid to Buford Plumbing.

This the 31st day of October, 2008.

Respectfully submitted,

PHYLLIS E. FRAZIER

By Her Attorneys,
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: /s/William N. Reed
WILLIAM N. REED

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CERTIFICATE OF SERVICE

I, William N. Reed, attorney for Phyllis E. Frazier, do hereby certify that I have this day filed the foregoing document via the Court's ECF System which served a copy upon the following counsel:

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This the 31st day of October, 2008.

/s/William N. Reed
WILLIAM N. REED